

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 05/10/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

JULIO C. MENDOZA,)	No. 1 CA-IC 10-0064
)	
Petitioner,)	DEPARTMENT C
)	
v.)	
)	MEMORANDUM DECISION
THE INDUSTRIAL COMMISSION OF)	(Not for Publication -
ARIZONA,)	Rule 28, Arizona Rules of
)	Civil Appellate Procedure)
Respondent,)	
)	
ARLEDGE HAY CO., INC.,)	
)	
)	
Respondent Employer,)	
)	
SCF ARIZONA,)	
)	
Respondent Carrier.)	
_____)	

Special Action - Industrial Commission

ICA Claim No. 20003-460054

Carrier Claim No. 0034301

The Honorable James B. Long, Administrative Law Judge

AFFIRMED

Julio C. Mendoza
Petitioner *In Propria Persona*

Queen Creek

Andrew Wade, Chief Counsel
The Industrial Commission of Arizona
Attorneys for Respondent

Phoenix

James B. Stabler, Chief Counsel
State Compensation Fund Arizona
By Sharon M. Hensley
Attorneys for Respondent Employer and Carrier

Phoenix

K E S S L E R, Judge

¶1 Julio C. Mendoza ("Claimant") appeals the Industrial Commission ("Commission") of Arizona's order denying his request to reopen his claim. For the reasons that follow, we affirm the Commission.

FACTUAL AND PROCEDURAL HISTORY

¶2 Claimant suffered a compensable injury in December 2000. Claimant filed a request to reopen his industrial injury claim in November 2009. SCF denied the request. Claimant requested a hearing.

¶3 The evidence presented at the hearing was that Claimant received an industrial injury after falling while cleaning an agricultural machine. As a result of the injury, one of his fingers was eventually amputated. His claim was closed in March 2008, and the settlement allowed Claimant, at the insurer's expense, to see a doctor once per month and

receive ongoing pain medication. At the time of closure he suffered intense pain in his hand and arm and could not open his hand.

¶4 At the time of the hearing, Claimant had pain from his hand through his neck, and the pain was more intense than when the claim closed. An expert medical report opined that Claimant had no new or previously undiscovered injury. Another expert opined that there was nothing that could be done to alleviate Claimant's pain other than for Claimant to continue his regimen of pain medication.

¶5 The ALJ rejected Claimant's application to reopen the claim. The ALJ found the defense experts credible and determined that Claimant had no new or previously undiscovered injury. Claimant filed a request for review. The ALJ was affirmed upon review. Claimant filed a timely petition for special action. This Court has jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(2) (2003), 23-951(A) (1995), and Arizona Rule of Procedure for Special Actions 10.

ANALYSIS

¶6 Claimant's argument on appeal is that his doctor recommended a change in treatment and his claim should be reopened to allow compensation for that new treatment. In reviewing findings and awards of the Commission, we defer to the

ALJ's factual findings, but review *de novo* questions of law. *Young v. Indus. Comm'n of Ariz.*, 204 Ariz. 267, 270, ¶ 14, 63 P.3d 298, 301 (App. 2003). We consider the evidence in the light most favorable to sustaining the award. *Lovitch v. Indus. Comm'n of Ariz.*, 202 Ariz. 102, 105, ¶ 16, 41 P.3d 640, 643 (App. 2002). We will uphold the ALJ's decision if there is reasonable evidence to support it and we will not reweigh the evidence upon review. *Jaramillo v. Indus. Comm'n of Ariz.*, 203 Ariz. 594, 596, ¶ 6, 58 P.3d 970, 972 (App. 2002).

¶7 An ALJ's responsibility is "to resolve conflicts in the medical evidence," *Gamez v. Indus. Comm'n of Ariz.*, 213 Ariz. 314, 316, ¶ 15, 141 P.3d 794, 796 (App. 2006), and weigh the credibility of witnesses, *Anamax Mining Co. v. Ariz. Dep't Econ. Sec.*, 147 Ariz. 482, 486, 711 P.2d 621, 625 (App. 1985). "[W]e will not disturb that resolution unless it is wholly unreasonable." *Gamez*, 213 Ariz. at 316, ¶ 15, 141 P.3d at 796 (citation and internal quotation marks omitted).

Claimant Did Not Demonstrate That His Condition Worsened After His Claim Closed.

¶8 Claimant contends that his claim should be reopened because his condition requires a new type of treatment. We disagree. A prior determination by the Commission to close a claim is final unless a claimant meets his burden to show there is a new, additional, or previously undiscovered condition that

supports reopening the case. A.R.S. § 23-1061(H) (Supp. 2010); *Maricopa Cnty. v. Indus. Comm'n of Ariz.*, 134 Ariz. 159, 162, 654 P.2d 307, 310 (App. 1982). If the claimant's request is based on a claim of a new or additional condition, he must establish a change of condition. *Cornelson v. Indus. Comm'n of Ariz.*, 199 Ariz. 269, 271, ¶ 14, 17 P.3d 114, 116 (App. 2001).

¶9 The ALJ's findings of fact indicate that Claimant did not demonstrate a new, additional, or undiscovered condition. Specifically, the ALJ relied on a report written by two expert physicians indicating that Claimant's condition was stable and had not changed. The report, which the ALJ specifically found credible, states that "[t]here is nothing new, additional or previously undiscovered related to the . . . industrial injury claim." The ALJ's finding was supported by the evidence and we decline to overrule it.

¶10 Claimant further contends that he should qualify to reopen his claim because of the increased pain he feels. Although the ALJ did find that increased subjective pain exists, "[a] claim shall not be reopened because of increased subjective pain if the pain is not accompanied by a change in objective physical findings." A.R.S. § 23-1061(H); *Polanco v. Indus. Comm'n of Ariz.*, 214 Ariz. 489, 494, ¶ 12, 154 P.3d 391, 396 (App. 2007). Because the medical evidence, which the ALJ found

credible, indicates that Claimant had no objective change in his condition, Claimant is not entitled to reopen his claim.

CONCLUSION

¶11 For the foregoing reasons we affirm the ALJ's denial of Claimant's petition to reopen.

/s/

DONN KESSLER, Judge

CONCURRING:

/s/

PATRICIA A. OROZCO, Presiding Judge

/s/

MICHAEL J. BROWN, Judge